IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

RSA No. 44 of 1997

Date of Decision : 1.10.2007

State of H.P. …Appellant.

v.

Rameshwari and another …Respondents.

***Coram*:**

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No*

For the appellant: Mr. Ashok Chaudhary, Addl. A.G.

For the respondents. None.

Sanjay Karol, J (Oral).

The present appeal arises out of the judgment and decree dated 24.8.1996 passed by the District Judge, Bilaspur in Civil Appeal No. 32 of 1990 titled as State of H.P. v. Marru (deceased) through his LRs, upholding the judgment and decree dated 22.2.1990 passed by the Sub Judge, Bilaspur in Civil Suit No. 46/1 of 89/88 titled as Marru v. State of H.P.

The concurrent findings of facts are assailed by the State on the ground that the essential ingredient necessarily required to plead and prove the plea of adverse possession are missing in the present case and the Courts below have wrongly

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

decreed the suit of the plaintiff upholding his plea of adverse possession.

The present appeal has been admitted on the following substantial questions of laws:-

"1) Whether the respondent /plaintiff has failed to prove his peaceful, continuous and hostile possession over the suit property from the last more than 30 years?

2) Whether the respondent has failed to prove that since when his possession over the suit property became adverse to the State of H.P.?

3) Whether the document Ext.PX is not issued by the competent officer hence cannot be read in evidence?

4) Whether mere misleading of oral as well as documentary evidence on record itself amount to substantial question of law?"

The First Appellate Court has not decreed the suit on the plaintiff's plea of adverse possession. In fact after examining the statements of the witnesses as also the material on record, the Court held that the plaintiff had worked without consideration for the construction of 'Panchayat Ghar' in Markand Mandi and in lieu of his services, banjar (uncultivable) land near Kirar Khad was allotted to him by the then Raja (Ruler) of Bilaspur.

Through the statement of Shri Mahantu (PW-2), this fact has been proved. Ext.PX dated 11.1.1954 is the grant by virtue of which the plaintiff was allotted the land. Even though the defendant has disputed the plaintiff's continuous and uninterrupted possession for more than 30 years, however, it has come on record that the plaintiff's possession relates back to more than 50 years. There is sufficient evidence on record in terms of Ext.PB copy of jambandi for the year 1984-85, Ext.PA copy of legal notice dated 19.5.1988 and Ext.PC copy of revenue record showing the possession of the plaintiff since 1954. Importantly, the receipt of the legal notice has not been disputed by the defendant in which it is clearly mentioned that the plaintiff is in possession of the land since January 1954 as per allotment by the Ruler of Bilaspur. The same was not replied by the defendant. The first Appellate Court has returned its findings that the Gram Sewak who had issued Ext.PX was authorized to issue the same. In fact there is no cross-examination by the State on the point of allotment.

The Courts below have correctly appreciated the evidence as also the material on record while arriving at its conclusion.

For all the aforesaid reasons, I see no reason to interfere with the concurrent findings of fact recorded by the

Courts below and the questions of law are answered accordingly.

The present appeal is dismissed.

October 1, 2007. **(Sanjay Karol)**
(rana) **Judge.**